



Mass Incarceration: Challenge and Solutions

For the last four decades, this country has relentlessly expanded the size of our criminal justice system, needlessly throwing away too many lives and wasting trillions of taxpayer dollars. This huge growth in states across the country has been driven by policy choices, not crime rates. For years, these policy choices have operated on a one-way ratchet pushing ever more people into jails and prisons, at huge financial and human cost.

Mississippi has been no exception. In fact, its prison population grew more between 1980 and 2012 than either Alabama's (395%) or Louisiana's (351%). Between 1980 and 2012 Mississippi's prison population grew by 471%. And this growth has not affected communities in equal measure. Black people account for 65% of Mississippi's state prison population despite only accounting for 37% of the state population. The rate at which Mississippi incarcerates black people is triple the rate for whites.

But we are not stuck with a criminal justice system that is unproductive, wasteful, and rife with racial disparities. Bad policies are made, and bad policies can be changed. Over the past decade, states around the country, including in the South, have taken important steps towards reform. South Carolina, for instance, saw a 9% reduction in its prison population after passing a law reducing sentences for drug and property times, eliminating mandatory minimums, limiting the use of the habitual offender laws, and limiting the number of people sent back to prison for violations. Many of these reforms have been led by conservatives. A lot more remains to be done.

ACLU Smart Justice Fair Justice Campaign

The ACLU's Smart Justice Fair Justice Campaign takes a solutions-based approach, focusing on what we can do to break our addiction to incarceration and overcriminalization. We use policy analysis, legislative advocacy, communications and litigation to create needed reforms. We take the long view, seeking to implement reforms that will change the structures that give rise to mass incarceration. We believe that we can and we must cut the number of people churning through the criminal justice system by at least 50% in the next ten years.

Mississippi Must Keep Pushing Forward

Bill 585 in Mississippi has taken some important steps toward changing policies that drive overincarceration in the state, but more remains to be done. By Pew's estimates, Mississippi's incarcerated population will reduce by 2,000 people in 10 years, to about 20,000 prisoners. As the chart below demonstrates, these reforms will undo the marginal prison growth Mississippi

has seen in the last decade, but will not address the massive growth that saw the prison population more than double in size over the 1990s.



Even if HB 585 results in a 2,000 person decline in the prison population, that will still be a very large system with huge financial costs, especially considering how frequently the Mississippi prison system is sued for its terrible conditions stemming from overcrowding. We can't stop here. The following are recommendations for next steps, followed by some bills from other states to give some context for these changes. A number of these recommendations are about taking steps toward 'thinking big' about criminal justice reform. Even if such reforms can't be passed in a year, they set the next goal posts that we are aiming for.

Recommendations for Ongoing Work in Mississippi

- 1) Big habitual offender (LWOP): Require that both the present conviction and at least one prior conviction be for crimes of violence, and make the bill retroactive to reach the hundreds of prisoners serving LWOP for convictions of nonviolent crimes in the state.
- 2) Little habitual offender: Exempt felonies with maximum sentences of 3 years or less from counting as triggers.
 - a. This will exempt at least the following:
 - i. Low-level drug possession (0.1-2g).
 - ii. Marijuana sale/PWID <30 grams.
 - iii. Marijuana possession (if charged as a felony) between 30 and 250 grams.
 - iv. Repeat misdemeanor thefts elevated to a felony.
- 3) Drug Court Eligibility
 - a. Carve out Burglary of a Dwelling from the list of prior crimes of violence that will render someone ineligible for drug court.
- 4) School Zone Reform

- a. Limit the number of sites/building that create zones to just schools, or schools and parks. Cut churches, ballparks, public gyms, youth centers, and movie theatres.
- b. Reduce the size of the zone to 500 feet (instead of 1500 feet from the building or 1000 feet from the property line).
- c. Require a reasonable probability that children actually be present at the time.
- d. Create a knowledge/intent requirement.
- e. Reduce the severity of the enhancement
 - i. Currently doubles the normal sentence, but for a 2nd conviction, raises to 3-Life. Eliminate the second school zone enhancement.
 - ii. Specify that the school zone enhancement cannot be used in conjunction with the drug-specific second offense enhancement (the combination results in a base sentence doubled twice).

Reforms in Other States

Habitual Offender

- **Indiana** exempted people with only low-level drug convictions from the habitual offender law. More recently, it limited the situations in which prior convictions for low-level felonies can trigger habitual offender enhancements.
- **North Carolina** reformed their habitual offender in 2011.
- **New Mexico** created a safety valve for their habitual offender law for non-violent crimes.
- **Texas** reformed their habitual offender law so that low-level felonies (state jail felonies) cannot be used as priors.

Drug Court Eligibility

- **Florida** expanded eligibility for drug court in 2011 (raised sentencing point threshold for eligibility).
- **Idaho** allowed people convicted of violent crimes to be eligible for drug court with the prosecutor's consent.

School Zone Reform

- **Delaware** shrunk zones from 1,000 to 300 feet, and removed churches from the statute.
- **Indiana** reduced from 1,000 to 500 feet and required a reasonable expectation that children be present. It also removed family housing complexes and youth centers from the statute so only schools and parks create zones.
- **Kentucky** reduced the size of their school zones from 3,000 to 1,000 feet.
- **Massachusetts** reduced the size of their school zones from 1,000 to 300 feet.
- **South Carolina** created an intent requirement. Someone must know he or she is committing a triggering drug offense in a school zone.